

PROFFER STATEMENT

TLZM 2013-0006, CRESCENT PARKE

September 18, 2014

December 23, 2014

April 17, 2015

April 23, 2015

August 28, 2015

December 18, 2015

December 23, 2015

March 4, 2016

May 13, 2016

July 1, 2016

July 7, 2016

July 12, 2016

July 26, 2016

[October 3, 2016](#)

MREC LD Leesburg Crossing, LLC, as the owner of approximately 39.71 acres of land, more particularly described as Loudoun County parcel identification numbers (hereinafter, "PIN") 232-37-7166, 232-37-5627 and 232-38-9290, ~~and~~ Edward R. Mooney Jr. and Stephen W. Pournaras, Trustees, the owner of approximately 11.28 acres of land, more particularly described as Loudoun County PIN 232-28-3893, ~~and Failmezger Investments, as the owner of an approximately 2.34-acre portion of a 20.99-acre parcel of land, more particularly described as Loudoun County PIN 232-37-3721~~ (hereinafter all ~~three~~ owners shall be referred to collectively as the "Owner" and all parcels collectively referred to as the "Property") hereby voluntarily proffer, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and Section 3.3.16 of the Town of Leesburg Zoning Ordinance, as amended, that the development of the Property shall be in substantial conformance with the proffers as set forth below. All exhibits referred to in this proffer statement are attached and incorporated into this proffer statement.

All proffers made herein are contingent upon the approval of the rezoning concept plan and proffer amendment request in the pending application and upon approval of the zoning modification requests. These proffered conditions are the only conditions offered on this rezoning application. These proffers shall become effective only upon approval by the Town Council of Leesburg, Virginia, of Zoning Amendment application TLZM 2013-0006.

1. LAND USE

1.1 Concept Plan

Development of the Property shall be in substantial conformance with Sheets 1 - 34 and 37 of the Zoning Map Amendment Concept Plan, prepared by Bowman Consulting, dated December 23, 2013 (hereinafter referred to as the "CP") and revised through ~~July 7~~[October 3](#), 2016, which is attached to these proffers as Exhibit A and which shall control the use, layout, and

configuration of the Property, with reasonable allowances to be made for engineering and design alteration and to meet Town zoning, subdivision and land development regulations.

1.2 Development Program

The Property shall be developed with a mix of uses as follows:

1.2.1 In the Crescent Design District Commercial (CD-C) zoning district, a maximum of 45,100 square feet of office and retail and other nonresidential uses as listed in Zoning Ordinance Table 7.10.9.D.1 under the headings “Commercial Uses, Industrial/Manufacturing and Institutional and Community Service Uses”. Any of these listed uses which require special exception approval shall obtain special exception approval before being established in the CD-C zoning district.

1.2.2 In the Crescent Design District Mixed-Use Optional (CD-MUO) zoning district, in Buildings ~~MUO-1 through 4~~ MU-1 through 4 (“MU 1-4”) and Buildings R-1 and R-2 if the “Optional Alternative CD-MUO Layout” shown on Sheet 2 of the CP is implemented, a maximum of ~~96-70~~ multi-family dwellings and a maximum of 28,625 square feet of nonresidential uses as listed in Zoning Ordinance Table 7.10.9.E.1 under the headings “Commercial Uses and Institutional and Community Service Uses”, including 2,000 square feet for community uses is permitted.

At the Owner’s option, Buildings ~~MUO-1 through~~ MU-1 - 4 may contain single-family attached dwelling units (including units in the “stacked townhouse” configuration) above the ground-floor nonresidential uses as an alternative to the ~~96-70~~ multi-family dwellings with multi-family dwellings provided in Buildings R-1 and R-2 as an alternative, provided that the amount of residential gross floor area does not exceed 151,630 square feet. In Building C-1, a maximum of 88,000 square feet of nonresidential uses as listed in Zoning Ordinance Table 7.10.9.E.1 under the headings “Commercial Uses, Industrial/Manufacturing and Institutional and Community Service Uses” is permitted. Any of these listed uses for Buildings ~~MUO-MU~~ 1-4 and Building C-1 which require special exception approval shall obtain special exception approval before being established in the CD-MUO zoning district.

Occupancy of the dwelling units in the CD-MUO district shall be age-restricted to households occupied by with at least one full-time resident 55 years of age or older per dwelling unit in order to qualify as “housing for older persons” in accordance with the criteria set forth in Va. Code Ann. §36-96.7, as amended. Concurrently with the establishment of a property owners association (“POA”), the Owner shall submit for review and approval by the Town a Declaration of Covenants governing development of the CD-MUO dwelling units, which will require, in perpetuity, that qualification for occupancy of any dwelling unit on the CD-MUO portion of the Property shall be limited to households with at least one full-time resident who is age 55 or older. The Declaration of Covenants shall also provide that no person under 19 years of age may reside in the CD-MUO dwelling units for a period of time exceeding 30 days in any consecutive six-

month period. The Declaration of Covenants shall be approved by the Town and recorded prior to the approval of the first record plat or site plan for the Property, whichever is first in time.

1.2.3 In the Crescent Design District Residential High Density (CD-RH) zoning district, a maximum of ~~196 single~~ 178 single-family attached dwelling units and ~~88-96~~ single family attached dwelling units in the “stacked townhouse” configuration.

1.3 Development Phasing:

1.3.1 Transportation Improvements. The transportation improvements shall be constructed according to the timing as described in Proffer 2.

1.3.2 Land Disturbance. The initial phase of development shall not limit land disturbance on any portion of the Property.

1.3.3 Required Minimum Non-residential Development. Prior to issuance of the ~~214th~~ 173rd residential certificate of occupancy anywhere on the Property, a minimum of ~~7,500~~ 20,000 square feet of non-residential development shall be issued certificates of occupancy anywhere on the Property.

2. **TRANSPORTATION IMPROVEMENTS**

2.1 Sidewalks.

Sidewalks shall be constructed as shown on Sheets 2 and 4 of the CP. Planting areas for internal street trees shall be comprised of enhanced/amended planting media suitable for urban settings and which will be maintained by the Property Owners' Association (POA) established in Proffer 6.7.

2.2 Public Street Improvements and Phasing of Improvements

2.2.1 Davis Avenue and Gateway Drive Extensions. The Owner shall dedicate the right-of-way for Davis Avenue and Gateway Drive Extensions from the existing terminus of Davis Avenue to the existing terminus of Gateway Drive in substantial conformance with Sheet 2 of the CP, including the construction of the bridge over Tuscarora Creek. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a Deed of Dedication. The Owner shall bond for construction of the General Urban Street section in substantial conformance with Sheet 4 of the CP, subject to Town approval. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of Davis Avenue and Gateway Drive from the existing terminus of

Gateway Drive to the existing terminus Davis Avenue. No occupancy permits shall be approved until Davis Avenue and Gateway Drive from the existing terminus of Gateway Drive to the existing terminus of Davis Avenue is constructed and the roadway is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.2 Other General Urban Streets. The Owner shall dedicate the right-of-way to construct the General Urban Streets listed in Proffers 2.2.2.1, 2.2.2.2 and 2.2.2.3 and in substantial conformance with Sheets 2 and 4 of the CP. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a deed of dedication.

2.2.2.1 Davis Court Relocated. The right of way shall be dedicated and bonded for construction concurrent with Davis Avenue pursuant to Proffer 2.2.1. No occupancy permits shall be approved until Davis Court is constructed and the roadway is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction. Upon acceptance of Davis Court Relocated into the public street system, the Owner will seek to vacate the right-of-way for the unused segment of existing Davis Court and incorporate the right-of-way, when vacated, into the surrounding lot zoned CD-C.

2.2.2.2 First Street. The right of way from the Property boundary to the roundabout on Davis Avenue Extended shall be dedicated and bonded for construction prior to the issuance of the first zoning permit for ~~building~~ Building C-1 or ~~buildings MU 1 through MU 4~~ Buildings MU 1 -4 and shall be constructed prior to the issuance of the first occupancy permit for ~~building~~ Building C-1 or for ~~buildings MU 1 through MU 4~~ Buildings MU 1 -4. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.2.3 General Urban Street A. The right of way from the Property boundary to the intersection with Davis Avenue Extended shall be dedicated and bonded for construction prior to the issuance of the first zoning permit for ~~buildings MU 1 through MU 4~~ Buildings MU 1 -4 and shall be constructed prior to the issuance of the first occupancy permit for ~~buildings MU 1 through MU 4~~ Buildings MU 1 -4. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street

system or release of the performance bonds for roadway construction.

2.2.3 Dulles Greenway Extension

2.2.3.1 Right-of-way Reservation. The Owner shall reserve a 90-foot wide strip of land along the eastern Property boundary in substantial conformance with Sheet 2 of the CP for the construction of the Dulles Greenway Extension as provided in the Town Plan (the “Dulles Greenway Extension”). The right-of-way reservation for the Dulles Greenway Extension shall be shown on the first record plat or site plan, whichever occurs first, which contains any portion of the Property south of Tuscarora Creek. Subject to approval of any required sign permits, the Owner shall install two (2) citizen advisory signs within the Dulles Greenway Extension reservation area facing Gateway Drive and Davis Avenue Extended informing the future residents of Crescent Parke of the eventual planned use of the Dulles Greenway Extension reservation area. These signs shall be installed prior to issuance of the first occupancy permit within the CD-RH zoned portion of the Property. Until such time as the Dulles Greenway Extension reservation area is dedicated for public street purposes pursuant to Proffer 2.2.4.2, the Dulles Greenway Extension reservation area may be used for open space purposes.

2.2.3.2 Right-of-way Dedication. The Owner shall dedicate any land located within the Dulles Greenway Extension reservation area as shown on Sheet 2 of the CP that is needed for right-of-way for the Dulles Greenway Extension at no cost to the Town or VDOT upon approval of the construction plans for the roadway extended to Harrison Street or Catoctin Circle to be prepared by others, upon full funding or bonding of the improvements to be constructed by others, and upon written request of the Town. The Owner shall sign the required record plat and accompanying documents such as the deed for the right-of-way dedication prepared by others within thirty days of receipt of the Town’s written request. The dedication of Dulles Greenway Extension right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a Deed of Dedication. The Owner’s obligation to dedicate this land shall terminate if the construction plans are not approved and bonded or funded by others within twenty-one years of the date of approval of TLZM-2013-0006. In the event the Owner’s obligation to dedicate the Dulles Greenway Extension is terminated in accord with Proffer 2.2.3.5, below, Owner agrees that the Dulles Greenway Extension reservation area shall remain as open space and no development shall occur within the Dulles Greenway Extension reservation area, in perpetuity as described in Proffer 2.2.3.5, below. The Owner shall preserve all trees within the Dulles Greenway Extension area specified as “Proposed Tree Save Within Greenway ROW Reservation” on Sheet 7 of the CP.

2.2.3.3 Right-of-way Reservation Disclosure. The Owner shall provide prospective purchasers written disclosure prior to finalizing any purchase contract about the Town Plan policies regarding the Dulles Greenway Extension reservation area for the potential extension of the Dulles Greenway to occur within this reservation area.

2.2.3.4 Funding of Transportation Study for Deletion of Dulles Greenway Extension from Town Plan. In order to fund any necessary transportation study that is required for the Town to approve an amendment to the Town Plan concerning a deletion of the Dulles Greenway Extension from the Town Plan, the Owner shall provide cash funding to the Town in the amount of Seventy Five Thousand Dollars (\$75,000). The Owner shall submit 50% of this amount (\$37,500) within sixty (60) days of rezoning approval and the remaining balance (\$37,500) at such time when the Town executes a contract with its retained transportation consultant. Any excess monies paid under this proffer not used for the transportation study shall be credited against the cash contribution for off-site transportation improvements required under Proffer 2.2.5.

If a transportation study is not required, the Owner shall contribute a total of \$75,000 for off-site transportation improvements. This contribution is in addition to the off-site transportation contribution specified in proffer 2.2.5, below. The Owner shall contribute this amount prior to the issuance of the 100th residential certificate of occupancy.

If a transportation study is required and the study costs less than \$75,000, the Owner shall contribute the difference between the cost of the study and \$75,000, which amount shall be used towards off-site transportation improvements in addition to the off-site transportation contribution specified in proffer 2.2.5, below.

2.2.3.5 Permanent Open Space Easement. In the event the Town determines, following submittal of the transportation study discussed in Proffer 2.2.3.4, above, that the Dulles Greenway Extension should be deleted from the Town Plan, the Owner shall impose a permanent open space easement on the Dulles Greenway Extension by instrument approved as to form and substance by the Town. In this event, the Owner shall be permitted to remove the two (2) citizen advisory signs referenced in Proffer 2.2.3.1, above.

2.2.3.6 Driver Feedback Speed Warning Signs. The Owner shall install two driver feedback speed warning signs, one in each direction on Sycolin Road near its the intersection with Gateway Drive, SE within the existing right-of-way at locations to be determined by the Town. The driver feedback speed warning signs shall be installed and rendered operational

prior to the Davis Avenue Extension connection to existing Gateway Drive being opened for vehicular traffic pursuant to Proffer 2.2.1, above. The costs incurred by the Owner to install and render operational the driver feedback speed warning signs shall be deducted from the cash contribution for off-site road improvements, as evidenced by invoices incurred for the construction and submitted to the Town, required for Proffer 2.2.5, below.

2.2.4 South King Street Turn Lanes

- 2.2.4.1. The Owner shall construct one northbound right-turn lane at the intersection of South King Street and Davis Avenue. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of the northbound right-turn lane at the intersection of South King Street and Davis Avenue. No occupancy permits shall be approved until the northbound right-turn lane at the intersection of South King Street and Davis Avenue is constructed and the turn lane is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.
- 2.2.4.2. The Owner shall construct one westbound left-turn lane at the intersection of South King Street and Davis Avenue, creating dual left-turn lanes. The Owner also shall re-stripe the existing through left-turn to a through right-lane. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of the westbound left-turn lane at the intersection of South King Street and Davis Avenue and the re-striping of the existing through left-turn lane. No occupancy permits shall be approved until the westbound left-turn lane at the intersection of South King Street and Davis Avenue and the re-striping of the existing through lane is constructed and the turn lane is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.
- 2.2.4.3 The Owner shall make any necessary alterations, if required by the Town or VDOT, to the existing traffic signal at the South King Street and Davis Avenue intersection as a result of the alterations to the intersection specified in Proffer 2.2.4. The Owner also shall install a pedestrian signal with countdown timer on this traffic signal and install crosswalks where needed at this intersection if approved by VDOT or the Town. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of these traffic signal alterations, if required. No occupancy

permits shall be approved until these traffic signal alterations are constructed, if required. Approval of any occupancy permits, however, shall not be contingent upon acceptance of these improvements by the Town or VDOT or release of the performance bonds for these alterations.

- 2.2.4.4 The Owner shall provide a cash equivalent contribution to the Town for the improvements specified under Proffer 2.2.4, in the event these improvements are constructed by others. The cash equivalent contribution shall be provided upon written request of the Town with the invoices of the construction costs provided to the Owner.

2.2.5 Cash Contribution for Off-site Transportation Improvements

The Owner shall provide a cash contribution totaling ~~\$768,060~~ \$700,368 to the Town for off- site transportation improvements. This cash contribution shall be paid at the time of issuance of the occupancy permit for each residential unit in the amount of \$1,797 for each multi-family unit located in the CD-MUO district and \$2,097 for each single-family attached dwelling unit located in the CD-RH district. The funds the Town receives from this cash contribution may be used for transportation improvements in the vicinity of the Crescent Parke property including but not limited to the following: (i.) reconstruction of the bridge on Davis Court to access the Olde Izaak Walton Park property; (ii.) construction of improvements to First Street off-site of the Crescent Parke property; (iii.) revisions to Gateway Drive to restrict left-turn movements onto Harrison Street; (iv.) installation of a traffic signal at Gateway Drive and Sycolin Road; or (v.) installation of turn lanes and traffic signal at the intersection of South King Street and the eastbound on-ramp of the Route 15 Bypass. Use of these funds is at the discretion of the Town of Leesburg.

In the event the Town Council declines dedication of the Park Property, pursuant to Proffer 3.3, below, then the Owner shall pay an additional cash contribution of \$1,050,000 to the Town for offsite transportation improvements in the vicinity of the Crescent Parke property prior to the issuance of the 100th residential certificate of occupancy. These offsite transportation improvements shall be at the discretion of the Town and may include, but not limited to, the following: (i.) construction of improvements to First Street off-site of the Crescent Parke property; (ii.) revisions to Gateway Drive to restrict left-turn movements onto Harrison Street and “traffic calming” improvements along Harrison Street; (iii.) installation of a traffic signal at Gateway Drive and Sycolin Road; and, or (iv.) installation of lanes and traffic signal improvements at the intersection of South King Street and the eastbound on-ramp of the Route 15 Bypass.

2.2.6 Acquisition of Off-Site Right-of-Way

The Owner shall exercise its best efforts to acquire any off-site right-of-way necessary to construct the improvements listed in Proffer 2.2, if any is required. The Owner's obligation to construct any improvements requiring off-site right-of-way shall be contingent on the Owner's ability to secure the necessary off-site right-of-way. If, despite the best efforts of the Owner to acquire the off-site right-of-way necessary for the construction of these improvements, the Owner will request in writing to the Zoning Administrator that the Town obtain such right-of-way by eminent domain, and the Owner shall fund the cost of such condemnation. This proffer shall in no way obligate the Town to use its powers of eminent domain and such exercise shall be undertaken solely at the discretion of the Town. If, within ninety (90) days of receipt of the request to the Town, the Town adopts a resolution to commence condemnation proceedings and the necessary right-of-way is acquired by the Town within fifteen (15) months of the adoption of the resolution, the Owner shall complete the improvements including the off-site right-of-way. If the Town does not adopt a resolution to pursue its powers of eminent domain within ninety (90) days of the receipt of the request or does not acquire the necessary right-of-way within fifteen (15) months from the adoption of the resolution, then the Owner shall provide a cash contribution to the Town equivalent to the bond amounts for the construction of the improvements requiring the off-site right-of-way, which amount shall be submitted to the Town and held specifically for the construction of the improvements in the future by others. This cash contribution shall be paid within 180 days of the town's receipt of the request to pursue eminent domain if the Town does not adopt a resolution to pursue eminent domain. Alternatively, if the Town adopts a resolution to pursue eminent but does not acquire the right-of-way within 15 months from the adoption of the resolution, the Owner shall pay the cash contribution within 18 months of the Town's adoption of the request to pursue eminent domain. However, this cash contribution will be paid only upon approval of construction plans for Davis Avenue Extended which ~~do~~ does not require the off-site right-of-way.

3. **OPEN SPACE AND RECREATION**

3.1 Internal Open Space and Recreation

3.1.1 Open Space Amenity Areas

The Owner shall provide internal open space areas as shown on Sheet 24 of the CP and the amenities within these open space areas as shown on Sheets 25 through 29 of the CP. These areas include the following

amenities:

3.1.1.a. The Plaza areas surrounding buildings C-2, C-3 and C-4 (labeled #10 on Sheet 29 of the CP) and the Plaza adjacent to ~~building~~ Building C-1 (labeled #9 on Sheet 29 of the CP), as detailed on Sheet 29 of the CP and which shall be constructed concurrently with ~~buildings~~ Buildings C-2, C-3 and C-4 for Plaza #10 and with ~~building~~ Building C-1 for Plaza #9;

3.1.1.b. The Plaza areas located adjacent to ~~building~~ Building MU-1 and between ~~buildings~~ Buildings MU-2 and MU-3 (labeled #8 on Sheet ~~28-29~~ of the CP), and the Pocket Park behind ~~building~~ Building MU-3 (labeled ~~#7-7A or #7B~~ on the “Optional Alternative CD-MUO Layout” on Sheet ~~28-25~~ of the CP), as detailed on Sheet ~~28-29~~ of the CP and which shall be constructed concurrently with ~~buildings~~ Buildings MU-1, MU-2 and MU-3, respectively (i.e., the area of #8 adjacent to MU-1 shall be constructed concurrently with ~~building~~ Building MU-1, the balance of #8 shall be constructed concurrently with ~~building~~ Building MU-2, and ~~#7-7A~~ shall be constructed concurrently with ~~building~~ Building MU-3). If the “Optional Alternative CD-MUO Layout is constructed, #7B shall be constructed concurrently with Buildings R-1 and R-2;

3.1.1.c. The Neighborhood Park (developer’s option) open space amenity with details as shown on Sheet ~~27-28~~ of the CP (labeled #6) and which shall be constructed prior to the approval of 127th residential occupancy permit for the Property;

3.1.1.d. The Creekside Park (linear park labeled #5 on Sheet 24 of the CP) with the amenities as shown on Sheet ~~26-27~~ of the CP and which shall be constructed prior to the issuance of the 100th occupancy permit for the CD-RH zoned portion of the Property;

3.1.1.e. The Neighborhood Common (pocket park) labeled as #1 and the Pocket Parks labeled ##2, 3 and 4 on Sheet ~~24-26~~ of the CP as detailed on Sheet 25 of the CP: with the Neighborhood Common #1 constructed prior to the issuance of the 1st occupancy permit for ~~buildings~~ Buildings BB, CC, DD, EE or FF; with Pocket Park #2 constructed prior to the issuance of the 1st occupancy permit for ~~buildings~~ Buildings CC or X; with Pocket Park #3 ~~constricted-constructed~~ prior to the issuance of the 1st occupancy permit for ~~buildings~~ Buildings L, M, N or O; and with Pocket Park #4 constructed prior to the issuance of the 1st occupancy permit for ~~buildings~~ Buildings H or S;

3.1.1.f. The Owner shall construct a ten-foot wide asphalt shared use trail through the Property as shown on Sheet 2 of the CP. The shared use trail shall be constructed in three segments as follows: (i) One segment runs from Davis Court Relocated to the bridge over Tuscarora Creek and shall

be constructed prior to the issuance of the first occupancy permit for ~~buildings~~ Buildings C-1, C-2 and C-3; (ii) the second segment is part of the bridge across Tuscarora Creek and shall be constructed concurrently with the improvements specified in Proffer 2.2.1; and (iii) the third segment runs from the bridge across Tuscarora Creek to Gateway Drive and shall be constructed prior to the issuance of the 1st occupancy permit for ~~buildings~~ Buildings EE or FF.

3.1.2 Bicycle Facilities

The Owner shall install a minimum of 16 bicycle parking spaces in bicycle racks in the CD-C zoned portion of the Property and 32 bicycle parking spaces in bicycle racks in the CD-MUO zoned portion of the Property as shown in the site tabulations on Sheet 4 of the CP.

3.1.3 Community Room

The Owner shall provide a minimum of 2,000 square feet of the ground floor commercial space in Building MU-4 for a community room which can be used as meeting space, party room, facility for classes or other uses by the POA or residents of Crescent Parke deemed suitable by the Property Owners' Association established pursuant to Proffer 6 and which shall own the 2,000 square foot condominium space. The use of this space by the POA may cease only upon the POA gaining control of the association and upon a vote of the majority of the residential property owners to terminate the use of the community meeting room after which the condominium space may be sold and/or used as retail space.

3.3 Olde Izaak Walton Park Property Dedication

The Owner shall dedicate approximately ~~18.65~~ 20.99 acres of the parcel identified as ~~2016~~-Loudoun County PIN 232-37-3721, owned by Failmezger Investments (the "Park Property"), which is currently leased by the Town for use as Olde Izaak Walton Park, to the Town of Leesburg for public park purposes. The Owner shall present a Deed of Dedication, approved as to form and substance by the Town Attorney, for dedication of the Park Property to the Town Council for consideration and acceptance not later than ~~two years~~ one year after the date of approval of this rezoning application, TLZM-2013-0006, Crescent Parke. The Owner shall prepare the Deed of Dedication and ~~Boundary Line Adjustment application and~~ associated plat(s), and pay all recording fees, taxes and costs, to effectuate the dedication of the Park Property to the Town and shall commence this process ~~by filing a Boundary Line Adjustment application~~ with the Town within ~~sixty-six (606) days~~ sixty-six (606) months of the date of approval of this rezoning application. ~~The Town acknowledges that a~~

~~2.34 acre portion of the Park Property will not be conveyed to the Town, will be released from the Town's lease with Failmezger Investments for the Park Property, and will become a portion of the Crescent Park development.~~ The Owner further agrees that it will (i) reimburse the Town for any and all lease payments ~~beyond the June 2017 monthly payment~~for Town fiscal years FY2017 and FY2018 if the Park Property is still owned by Failmezger Investments, including all payments for real property taxes, or (ii) in lieu of reimbursement, the Owner may forego these lease payments and all real property tax payments and shall notify the Town, in writing, of either (i) or (ii). During the period of time between the approval of the rezoning and the Owner's presentment of the Deed of Dedication to the Town Council allowing for dedication of the Park Property, the Owner agrees that the Park Property shall at all times remain dedicated for park purposes in conformance with the Town's lease with Failmezger Investments.

In the event the Town Council declines dedication of the Park Property following ~~approval of the Boundary Line Adjustment application and~~ the Owner's presentment of the Deed of Dedication to the Town Council, then the Owner shall not dedicate the Park Property and (i) the Owner shall provide, upon issuance of each residential certificate of occupancy ~~permit~~, a one-time cash contribution in the amount of \$1,000 per dwelling unit, which shall be used for capital improvements for recreation facilities within the Town of Leesburg, and (ii) the Owner's obligation to reimburse the Town for lease payments and real property taxes shall end upon Town Council's decision to decline dedication of the Park Property.

3.4 Restoration of Existing Pond

Upon acceptance of the Park Property by the Town and subsequent conveyance of the Park Property by the Owner to the Town, the Owner shall, within eighteen (18) months of the conveyance, commence a program of restoration of the existing pond on the Park Property as follows:

3.4.a The Owner shall apply for and receive all appropriate federal, state, or local permits for the restoration work, described below

3.4.b The Owner shall dredge the existing pond to provide for an additional depth of two feet so as to maintain an average depth of 4 to 5 feet. The Owner may access the existing pond for this dredging operation from the east side of the Park Property. The owner shall upon completion of this operation and when the Pond has a stabilized environment shall restock with fish as agreed upon between the Town and the Owner. For two years after the completion the owner will monitor and treat water.

3.4.c The Owner shall remove selective understory vegetation surrounding the existing pond as may be determined by the Town no greater than 75 feet from the banks of the existing pond.

3.4.d The Owner shall restore the existing natural trail and continue the existing trail so that the trail surrounds the entire pond. The trail may be extended to the development

3.4.e The Owner shall repair erosion defects in the existing dam, which will be determined prior to permit process

3.4.f The Owner shall install a pond fountain that shall be designed to circulate pond water which shall meet industry standards for a pond between 3 to 7 acres

3.4.g The Owner shall install landscaping around the existing pond compatible with the existing vegetation in accordance with a landscaping plan agreed to between the Town and the Owner.

3.4.h The Owner shall hire a pond maintenance company to maintain the pond for the first two years after completion of the pond restoration with a defined scope of work as agreed to by the Owner and the Town.

In the event that the Town chooses not to accept conveyance of the Park Property, the Owner shall contribute a cash amount of Four Hundred Eighty Thousand Dollars (\$480,000), representing the estimated cost of the restoration of the existing pond outlined in paragraphs 3.4.a through 3.4.g, above, to the Town as an additional off-site transportation contribution that shall be in addition to the funds contributed pursuant to paragraphs 2.2.3.4 and 2.2.5 of this proffer statement.

4. **SITE DESIGN**

4.2 Energy Saving Design

All dwellings on the Property shall be designed and constructed as ENERGY STAR Version 3 ® or Home Energy Rating System (HERS) qualified homes with a maximum rating of 90. With the submission of a zoning permit for each building, the Applicant shall provide certification that the construction documents have been reviewed by a qualified Home Energy Rater, and that the building meets ENERGY STAR Version 3 ® or HERS standards with a maximum rating of 90. Prior to the issuance of an occupancy permit, a "wet" ENERGY STAR Version 3 ® or HERS label must be verified at each dwelling unit's electrical panel and a copy of the Home Energy Rating report shall be provided by the Home Energy Rater. The Home Energy Rating report shall include the unit address, builder's name, Rater's name and date of verification.

4.3 Dumpster Pad

The dumpsters use for the mixed-use ~~buildings MU-1, MU-2, MU-3 and MU-4~~ Buildings MU1-4 shall be designed to compact the refuse and minimize odors emanating from the dumpster. The dumpster enclosures shall include a sign

limiting the hours trash and recycling pick-up may occur.

4.4 Filtterra Devices

If Filtterra devices are used to satisfy BMP requirements and conflict with proposed street tree locations, alternate spacing of street trees to accommodate the Filtterra device shall be provided prior to any determination that the required street trees cannot be provided. Understory trees, subject to the approval of the Zoning Administrator, shall be installed as the vegetative material with Filtterra devices.

4.5 Stormwater Management (SWM) and Best Management Practices (BMP) Strategy

4.5.1 Water Quality Requirements: Any site plan submitted for development of the property shall include Best Management Practices ("BMPs") in accordance with the Town's Design and Construction Standards Manual ("DCSM") as well as Virginia's stormwater regulations, whichever is more restrictive. BMP strategies listed in the Virginia State Clearinghouse that may be utilized with this project may include but shall not be limited to, stream restoration, grassed swales, vegetative filter strips, mechanical devices and bioretention facilities.

4.5.1.1 Exceptions: The purchase of off-site nutrient credit for BMPs is expressly prohibited by Zoning Ordinance Section 14.2.2, as all water quality devices must be constructed *on-site* when a modification of the Creek Valley Buffer is requested.

4.5.2 Stormwater Detention Requirements for the 100 year storm: In addition to all other Town required stormwater management requirements as defined by the DCSM, the Town's 1990 Overall Stormwater Management Master Plan, and all other local, State and Federal regulations, the Owner shall in addition, provide storm water detention on the Property for the 100-year storm.

4.5.3 Alternate Compliance for providing detention for the 100 year Storm Event: In lieu of the requirements stated in Proffer 4.5.2 above, the Owner may elect to prepare a 100-year stormwater detention study (herein referred to as the "Study"). If the Alternate Compliance Option is chosen, the Owner shall adhere to the following process.

4.5.3.1 The Owner shall prepare an updated 100 year stormwater Study for the entire Tuscarora Drainage Shed (Upper and Lower)

including all contributing tributaries, following generally accepted best engineering, hydraulic and hydrologic practices. This study shall be submitted prior to or concurrent with the first submission of any site plan or construction drawing associated with the Property. The Study shall be reviewed and approved by a third party expert (see Proffer 4.5.3.3), the Town and any other applicable review agencies prior to the approval of any site plan or construction drawing associated with the Property. At a minimum, the Study shall include but not be limited to the following criteria:

- (a) Provide an analysis based upon current buildout of the drainage shed.
- (b) Provide an analysis based upon the maximum potential development of the drainage shed based upon the maximum possible runoff.
- (c) Provide an analysis that encompasses all ponds within the drainage shed and associated routings.
- (d) Provide a detailed analysis of the timing of individual peak flows. Specifically, the timing of the peak flows from Town Branch and the peak flows of Tuscarora Creek.
- (e) Provide justification for any differences found between the results of the Town of Leesburg Stormwater Management Master plan and the results determined by the applicant.

4.5.3.2 The purpose of said Study is to compare the new updated Study to the Town's 1990 Overall Stormwater Management Master Plan and determine whether detention of the 100 year storm event for the Property would increase or decrease the peak 100 year flood water surface elevations along Tuscarora Creek on downstream adjacent properties near the confluence of Town Branch. The analysis to be done with this Study ~~is~~ is to determine the net benefit or detriment of detaining the 100-year storm event and its impact on the Property and adjacent downstream properties.

4.5.3.3 This Study shall be prepared by the Owner's engineer and reviewed by both the Town as well as a third party expert to be mutually agreed upon by both the Town and the Owner.

4.5.3.4 The Owner shall contract with the mutually agreed upon third party expert directly. The Owner shall also be responsible for all contractual services and payments for services rendered to the mutually agreed upon third party expert.

4.5.3.5 Alternate compliance in lieu of stormwater detention on the Property for the 100-year storm event shall only be permitted with the expert's finding and the Town's concurrence that such detention of the 100-year storm would result in increased peak 100-year stormwater elevations within Tuscarora Creek which would have a negative impact on the stream itself and or a negative impact on the downstream adjacent properties.

4.6 Building Elevations. The final design of the buildings for which a rezoning to increase the building height is requested shall be in substantial conformance with the conceptual building elevations, which are attached to these proffers as Exhibit B, as follows:

4.6.1 Building C-1: The elevations prepared by DBI Architects including the east elevation dated January 22, 2015, the south elevation dated January 23, 2015, the west elevation dated January 27, 2015, and the north elevation dated February 9, 2016.

4.6.2 Buildings MU 1-4: The elevations prepared by DBI Architects dated January 22, 2015.

4.6.3 Townhouses: The elevations prepared by DBI Architects dated April 21, 2015.

4.6.4 ~~4.6.4~~ Two-Over-Two Units: The elevations prepared by DBI Architects dated May 22, 2015.

4.6.5 Multifamily Buildings R-1 and R-2: The design of these two buildings shall conform to the applicable design standards contained in Zoning Ordinance Section 7.10.6, and as may be modified as permitted under Zoning Ordinance Section 7.10.12.

5. **FIRE AND RESCUE SERVICES**

5.1 Residential Uses

Upon issuance of the Zoning Permit for each residential unit on the Property, the Owner shall provide the Town with a one-time cash contribution of \$100.00 per residential unit for distribution to the fire and rescue companies providing primary service to the Property. This contribution shall be divided equally between those fire and rescue companies that primarily serve the Property.

5.2 Non-residential Uses

Upon issuance of each Zoning Permit for each non-residential use, the Owner shall provide the Town with a one-time cash contribution of Ten Cents (\$.10) per gross square foot of commercial use on the Property for distribution to the fire and rescue companies providing primary service to the Property. This contribution shall be divided equally between the primary servicing fire and rescue companies.

5.3 Emergency Vehicle Access ~~during~~ During Construction

The Owner shall provide, no later than the framing stage of construction, all-weather, gravel-compacted access for emergency vehicles, acceptable to the Fire Marshal, to all portions of the Property under construction.

6. PROPERTY OWNERS ASSOCIATION

6.1 Town Review

Documents to establish a Property Owners' Association (POA) for the Property, in which all property owners (both residential and non-residential) will be required to be a member, will be submitted to the Town for review and approval as to form and consistency with these proffers. The POA documents shall state that no provisions shall be amended by the POA which address any matters that are proffered or are otherwise required by this rezoning approval without prior approval by the Town.

6.2 Timing

The POA will be established prior to approval of the first Site Plan for the Property.

6.3 Duties

The POA shall have, among its duties, snow removal, trash removal and the maintenance of all commonly owned facilities on the Property including the underground stormwater management facility, private roads and private access easements, private parking areas, private storm drainage, private common areas, including the POA-owned open space, trails, greens, recreational facilities, bicycle parking facilities and play areas, the community room condominium space provided for in Proffer 3.1.3. The POA also shall be responsible for enforcing the covenants on the property, including the covenant that garage space is not permitted to be converted to habitable space.

6.4 Garage Conversions

The POA documents shall include a provision that will prohibit any garage space

from being converted to any type of habitable and/or living space.

6.5 Private Parking Courts

The POA documents shall include a disclosure that the private parking courts cannot be accepted as public roads by the Town of Leesburg and will be the responsibility of the POA.

6.6 Private Yard Maintenance

The POA documents shall include a provision making the POA responsible for maintaining the yards and landscaping of all of the lots within the Property, including the individually owned lots for the single family attached dwelling units. The POA shall monitor the building-mounted light fixtures on the rear of the dwelling units, which provide safety lighting for residential common parking court travel ways (alley ways), to ensure these light fixtures remain lit during nighttime hours and to ensure light bulbs are replaced in a timely fashion.

6.7 Street Tree Maintenance

The POA documents shall include a provision making the POA responsible for maintaining the street trees within the public street right-of-way, including the replacement of any diseased or dead trees.

7. **NOISE ATTENUATION**

The Owner shall install windows and doors with a minimum 32 Sound Transmission Class ("STC") rating on the south, east and west sides of the following buildings as shown on Sheet 2 of the CP: ~~the four units of building A closest to the Route 15 Bypass, the three units of building C closest to the Route 15 Bypass, and~~ all of the units in ~~buildings~~ Buildings D, K, P, Q, R, U, V, Y, Z and AA. A Commonwealth of Virginia licensed acoustical engineer shall submit a report with the engineer's seal prior to issuance of the occupancy permit for any of the units in the buildings as listed in this proffer certifying the following information: the STC rating of the installed windows and the interior noise level. Furthermore, the Owner shall include a disclosure statement to the buyers of the units in the buildings as listed in this proffer, which indicates that the home is located with the Noise Abatement Corridor Overlay District (NAC). The Owner also shall provide copies of the report provided to the Town of Leesburg pursuant to this proffer.

8. **CAPITAL FACILITIES CONTRIBUTION**

The Owner shall provide, upon issuance of each occupancy permit for a dwelling unit, a one-time cash contribution in the amount of \$5,100 per each multi-family dwelling unit, \$6,652 per each two-over-two dwelling unit, and \$11,974 for each single-family-attached dwelling unit, which shall be used for capital projects for public schools serving the Town

of Leesburg or other capital improvement projects in the Town of Leesburg. Notwithstanding the prior sentence the per unit contribution for the 70 age-restricted dwelling units located in the CD-MUO zoning district shall be designated specifically for building improvements on the Park Property, if the Park Property dedication pursuant to proffer 3.3 is accepted by the Town. If the Town does not accept the Park Property dedication, the per unit contribution for the 70 dwelling units located in the CD-MUO zoning district shall be designated specifically as an off-site transportation contribution, which shall be in addition to the funds contributed pursuant to Proffers 2.2.3.4 and 2.2.5.

9. CONSTRUCTION TRAFFIC

The Owner shall prohibit construction traffic from using Davis Court to access the Property. Instead, construction traffic shall use Davis Avenue Extension for access or a temporary construction access drive in the Davis Avenue Extension right-of-way until the permanent roadway is constructed.

10. WAIVERS AND MODIFICATIONS

Approval of this application #TLZM-2013-0006 does not express or imply any waiver or modification of the requirements set forth in the Subdivision and Land Development Regulations, the Zoning Ordinance, or the Design and Construction Standards Manual, except as expressly approved in application #TLZM-2013-00036 and all final plats, development plans, and construction plans shall remain subject to these applicable Town regulations.

11. ESCALATION CLAUSE

All monetary contribution proffers shall escalate on a yearly basis beginning one year from the date of approval of the first site plan containing residential buildings and/or mixed use buildings or the first record plat containing such buildings, whichever occurs first in time, and which shall change effective each January 1 thereafter, based on the Consumer Price Index (CPI) for the Washington SMSA.

12. BINDING EFFECT

The undersigned owners of record of the Property do hereby voluntarily proffer the conditions stated above, which conditions shall be binding on the Owner, its successors and assigns shall have the effect specified in Section 15.2-2303, et seq. of the Code of Virginia (1950), as amended.

[SIGNATURES ON FOLLOWING PAGES]

Witness the following signatures and seals this day of _____, 2016.

Loudoun County PIN ##: 232-37-7166,
232-37-5627 and 232-38-9290

MREC LD Leesburg Crossing, LLC
A Virginia Limited Liability Company

By: Lansdowne at Leesburg Crossing LLC
A Virginia Limited Liability Company, its
Manager

By: _____

Name: Leonard S. Mitchel
Its: Managing Partner

State of _____
City/County of _____

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that
_____ whose name is signed to the foregoing instrument,
personally appeared before me and has this day acknowledged that he executed
the foregoing proffers with the full power and authority to do so.

Given under my hand this _____ day of _____, 2016

Notary Public

My Commission Expires:

Date

Loudoun County PIN #: 232-28-3893

By: _____

Name: Stephen W. Pournaras

Its: Trustee

State of _____
City/County of _____

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this _____ day of _____, 2016

Notary Public

My Commission Expires:

Date

Loudoun County PIN #: 232 37 3721

Failmezger Investments, LLC
A Virginia Limited Liability Corporation

By: _____

Name: Carl Failmezger
Its: Managing Member

State of _____
City/County of _____

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that

_____, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this _____ day of _____, 2016

Notary Public

My Commission Expires:

Date

EXHIBIT A

Crescent Parke Concept Plan

Prepared by Bowman Consulting

Dated December 23, 2013 and Revised through ~~July 7~~October 3, 2016

EXHIBIT B

Crescent Parke Conceptual Building Elevations

Prepared by DBI Architects